

Message Text

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E.O. 11652: N/A

TAGS: EFIS, BF

SUBJECT: SPINY LOBSTER

1. FOLLOWING IS A DRAFT TREATY UNDER CONSIDERATION REPRESENTING PRELIMINARY USG PROPOSAL FOR LONG-TERM MANAGEMENT AND CONSERVATION OF SPINY LOBSTER OFF U.S. AND BAHAMIAN COAST AND PROVISIONAL APPLICATION. EMBASSY IS REQUESTED TO PREPARE DRAFT FOR TRANSMITTAL TO BAHAMIAN OFFICIALS, BUT TO AWAIT INSTRUCTIONS TO TRANSMIT AS WE ARE CONSULTING WITH OTHERS ON DRAFT. WE HOPE TO BE ABLE TO AUTHORIZE TRANSMITTAL BEFORE THE END OF THE WEEK.

2. COMMENT. DRAFT REFLECTS DESIRE OF DEPARTMENT TO ESTABLISH LONG-TERM BASIS FOR DEALING WITH SPINY LOBSTER FISHING IN ORDER TO MINIMIZE CHANCES OF RECURRENT POLITICAL PROBLEMS. WE BELIEVE CHANCES ARE BEST IF INTERIM SOLUTION IS SOUGHT AS PART OF PERMANENT SOLUTION. ARTICLE 13 OF DRAFT PROVIDES FOR INTERIM SOLUTION; APPROACH OF PROVISION-
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AL APPLICATION OF A GENERALLY SATISFACTORY PERMANENT TREATY MAY GIVE US SOMEWHAT GREATER FLEXIBILITY THAN A SEPARATE INTERIM ACCORD. THE SPECIFIC DETAILS OF THE INTERIM ACCORD WOULD BE WORKED OUT IN THE FORM OF PROVISIONAL REGULATIONS WHICH, OF COURSE, WE WILL BE PREPARED TO

NEGOTIATE AT THE SAME TIME. HOWEVER, WE WOULD PREFER TO DISCUSS THE GENERAL CONCEPT OF THIS APPROACH BEFORE GETTING INTO THE ACTUAL DETAILS OF FISHING REGULATIONS AND FEES.

3. BEGIN TEXT: DRAFT TREATY FOR THE CONSERVATION AND MANAGEMENT OF SPINY LOBSTER

PREAMBLE

(TO BE DRAFTED LATER)

ARTICLE 1

THE OBJECTIVES OF THIS TREATY SHALL BE TO ENSURE THE CONSERVATION AND EFFECTIVE MANAGEMENT OF THE SPINY LOBSTER RESOURCE THROUGHOUT THE AREA OF APPLICATION OF THIS AGREEMENT, AND TO PROVIDE FOR COOPERATION ON OTHER FISHING PROBLEMS OF MUTUAL CONCERN.

ARTICLE 2

THE PROVISIONS OF THIS TREATY AND THE REGULATIONS AND ORDERS ISSUED PURSUANT THERETO, SHALL APPLY, IN THE MANNER AND TO THE EXTENT PROVIDED IN THIS TREATY, TO THE FOLLOWING AREA HEREAFTER REFERRED TO AS "THE AREA": (THE SPECIFIC DESIGNATION OF THE AREA REMAINS TO BE DRAFTED. IN GENERAL, IT SHOULD BE DESIGNATED BY REFERENCE TO GEOGRAPHIC COORDINATES, SHOULD INCLUDE THE ATLANTIC AREA OFF THE BAHAMAS COAST AND THE FLORIDA COAST, AND MIGHT EXCLUDE - OR LIMIT FOREIGN ACCESS - TO SPECIFIED GEOGRAPHIC AREAS CLOSE TO SHORE. ONE POSSIBILITY WOULD BE: ALL AREAS OF THE ATLANTIC OCEAN SOUTH OF 30 DEGREES NORTH LATITUDE OFF THE COAST OF THE UNITED STATES OF AMERICA OR THE COMMONWEALTH OFF THE BAHAMAS WHERE EITHER PARTY AT LIMITED OFFICIAL USE
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THE TIME ENJOYS SOVEREIGNTY OR SOVEREIGN RIGHTS OVER FISHING FOR SPINY LOBSTER UNDER INTERNATIONAL LAW, PROVIDED THAT EITHER PARTY MAY RESERVE TO ITS VESSELS ALL SPINY LOBSTER FISHING WITHIN BLANK NAUTICAL MILES OF THE COAST (FOR THESE PURPOSES OF THIS TREATY THE COAST IS THE LOW WATER LINE ALONG THE COAST OR CLOSING LINES DRAWN ACROSS THE MOUTHS OF BAYS AND RIVERS IN ACCORDANCE WITH INTERNATIONAL LAW).

ARTICLE 3

THE PARTIES HEREBY ESTABLISH AND AGREE TO MAINTAIN A COMMISSION TO BE KNOWN AS THE INTERNATIONAL SPINY LOBSTER

COMMISSION, HEREAFTER CALLED THE COMMISSION, CONSISTING OF THREE COMMISSIONERS APPOINTED BY THE BAHAMAS AND THREE COMMISSIONERS APPOINTED BY THE UNITED STATES. EACH COMMISSIONER SHALL SERVE AT THE PLEASURE OF THE PARTY BY WHICH HE WAS APPOINTED. EACH PARTY SHALL FILL VACANCIES IN ITS REPRESENTATION ON THE COMMISSION AS THEY OCCUR.

THE CHAIRMAN SHALL BE ONE OF THE REGULAR COMMISSIONERS, ALTERNATING BETWEEN THE REPRESENTATIVES OF THE PARTIES ON AN ANNUAL BASIS, THE FIRST CHAIRMAN TO BE DETERMINED BY LOT.

EACH PARTY SHALL PAY THE EXPENSES AND SALARIES OF ITS OWN COMMISSIONERS, AND OTHER EXPENSES INCURRED BY THE COMMISSION SHALL BE PAID IN EQUAL PARTS BY THE TWO PARTIES.

ARTICLE 4

THE COMMISSION SHALL MEET AT LEAST ONCE A YEAR, OR AT THE REQUEST OF EITHER PARTY, AT SUCH TIME AND PLACE AS MAY BE AGREED BY THE PARTIES.

THE COMMISSION MAY ADOPT AND SUBSEQUENTLY AMEND BY-LAWS OR RULES FOR THE CONDUCT OF ITS MEETINGS BY MAJORITY VOTE.

REGULATIONS AND ORDERS OF THE COMMISSION SHALL BE
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EFFECTIVE ONLY PURSUANT TO AFFIRMATIVE VOTES BY AT LEAST TWO OF THE COMMISSIONERS OF EACH PARTY. ALL REGULATIONS AND ORDERS OF THE COMMISSION SHALL BE SUBJECT TO THE EXPRESS APPROVAL OF THE TWO PARTIES, WITH THE EXCEPTION OF ORDERS PERMITTED BY APPROVED REGULATIONS FOR THE ADJUSTMENT OF CLOSING OR OPENING OF FISHING PERIODS AND AREAS AND SIMILAR ADJUSTMENTS IN ANY FISHING SEASON, AND OF EMERGENCY ORDERS REQUIRED TO CARRY OUT THE PROVISIONS OF THE TREATY PURSUANT TO ARTICLE 5, PARAGRAPH 2. EACH PARTY'S APPROVAL SHALL BE NOTIFIED BY OFFICIAL LETTER TO THE COMMISSION, AND SHALL BE EFFECTIVE FOR THE ENTIRE PERIOD SPECIFIED IN THE REGULATION OR ORDER UNLESS OTHERWISE STATED IN THE LETTER.

ARTICLE 5

1. THE COMMISSION IS HEREBY EMPOWERED TO ISSUE REGULATIONS OR ORDERS WITH RESPECT TO SPINY LOBSTER FISHING IN ALL OR ANY PART OF THE AREA TO:

A) LIMIT OR PROHIBIT THE TAKING OF SPINY LOBSTER;

B) ESTABLISH NATIONAL QUOTAS;

C) ESTABLISH SEASONS AND AREAS OF FISHING;

D) SPECIFY THE NUMBERS, SIZES AND TYPES OF FISHING
VESSELS AND FISHING GEAR USED;

E) PREVENT GEAR CONFLICT AND ENSURE THAT SPINY LOBSTER
FISHING IS CONDUCTED WITH REASONABLE REGARD FOR OTHER
USES OF THE SEA;

F) SPECIFY THE AGE AND SIZE OF SPINY LOBSTER TO BE TAKEN;

G) SPECIFY INFORMATION REGARDING THE SPINY LOBSTER
FISHERY TO BE FURNISHED TO THE COMMISSION;

H) PROVIDE FOR THE COLLECTION OF REASONABLE FEES IN
RESPECT TO SPINY LOBSTER CAUGHT TO DEFRAY THE COSTS OF
THE COMMISSION'S CONSERVATION AND MANAGEMENT PROGRAM
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AND FOR DISTRIBUTION TO A PARTY DESIRING TO COLLECT SUCH
FEES IN RESPECT OF SOME OR ALL SPINY LOBSTER FISHING OFF
ITS COAST.

I) SPECIFY ANY OTHER REQUIREMENTS DIRECTLY RELATED TO
THE OBJECTIVES OF THIS TREATY WITH RESPECT TO THE CON-
SERVATION AND MANAGEMENT OF SPINY LOBSTER.

2. THE COMMISSION MAY ISSUE EMERGENCY ORDERS WHICH WILL
BE IMMEDIATELY EFFECTIVE. SUCH ORDERS MAY BE ISSUED IF
APPROVAL OF COMMISSION REGULATIONS HAS NOT BEEN RECEIVED
FROM BOTH PARTIES AT THE OPENING OF THE FISHING SEASON
OR AT ANY OTHER TIME, AND THE COMMISSION DETERMINES BY
UNANIMOUS VOTE THAT THE OBJECTIVES OF THE TREATY WILL BE
SERIOUSLY IMPAIRED UNLESS IMMEDIATE ACTION IS TAKEN.
SUCH EMERGENCY REGULATIONS SHALL BE SUBMITTED TO EACH
PARTY AND SHALL BE EFFECTIVE UNTIL DISAPPROVED BY EITHER
PARTY OR UNTIL SIX DAYS HAVE ELAPSED, WHICHEVER OCCURS
FIRST.

ARTICLE 6

1. REGULATIONS AND ORDERS OF THE COMMISSION SHALL BE
BASED ON THE BEST SCIENTIFIC EVIDENCE AVAILABLE TO THE
COMMISSION.

2. THE COMMISSION SHALL ENSURE, THROUGH PROPER CONSERVA-
TION AND MANAGEMENT REGULATIONS AND ORDERS, THAT THE
SPINY LOBSTER RESOURCE IN THE AREA IS NOT ENDANGERED BY

OVER-EXPLOITATION.

3. THE COMMISSION REGULATIONS AND ORDERS SHALL BE DESIGNED TO MAINTAIN THE SPINY LOBSTER POPULATION AT A LEVEL WHICH CAN PRODUCE THE MAXIMUM SUSTAINABLE YIELD, TAKING INTO ACCOUNT RELEVANT ENVIRONMENTAL AND ECONOMIC FACTORS.

4. THE COMMISSION REGULATIONS SHALL ENSURE EQUITABLE PARTICIPATION BY THE VESSELS OF EACH PARTY IN THE SPINY LOBSTER FISHERY IN THE AREA, TAKING INTO ACCOUNT THE LIMITED OFFICIAL USE
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HARVESTING CAPACITY OF THE VESSELS OF EACH PARTY IN AREAS OFF ITS COAST AND RELEVANT FISHING DEVELOPMENT PROGRAMS.

5. IN ADDITION TO ITS FUNCTIONS UNDER ARTICLE 5, THE COMMISSION MAY CONSIDER AND MAKE RECOMMENDATIONS TO THE PARTIES ON ANY MATTERS OF MUTUAL CONCERN REGARDING FISHERIES IN THE AREA.

ARTICLE 7

1. EACH PARTY SHALL REQUIRE ALL OF ITS FISHING VESSELS ENGAGED IN FISHING FOR SPINY LOBSTER IN THE AREA TO BE DOCUMENTED UNDER ITS LAWS AS AUTHORIZED TO ENGAGE IN THE FISHERY. A LIST OF THE VESSELS SO DOCUMENTED SHALL BE COMMUNICATED TO THE COMMISSION AND UPDATED AS NECESSARY.

2. THE COMMISSION SHALL ESTABLISH PROCEDURES AND MAKE RECOMMENDATIONS TO ENSURE THAT ENFORCEMENT VESSELS AND OFFICIALS OF BOTH PARTIES ARE APPRISED OF THE NECESSARY INFORMATION PURSUANT TO THIS ARTICLE.

ARTICLE 8

1. ENFORCEMENT OF THE REGULATIONS AND ORDERS OF THE COMMISSION SHALL BE CARRIED OUT BY VESSELS, AIRCRAFT, AND OFFICIALS OF THE PARTIES DESIGNATED BY THE PARTIES AND CERTIFIED BY THE COMMISSION SHALL CERTIFY SUCH VESSELS, AIRCRAFT, AND OFFICIALS AS AUTHORIZED TO CARRY OUT THE ENFORCEMENT ACTIONS SPECIFIED BELOW. SUCH VESSELS, AIRCRAFT, AND OFFICIALS SHALL BE CLEARLY IDENTIFIED AS AUTHORIZED TO ENFORCE THE COMMISSION REGULATIONS.

2. ENFORCEMENT ACTIONS SHALL BE CARRIED OUT IN A MANNER THAT MINIMIZES INTERFERENCE WITH FISHING.

3. WHENEVER AN AUTHORIZED ENFORCEMENT OFFICIAL HAS

REASONABLE GROUNDS FOR BELIEVING THAT A FISHING VESSEL
OF THE OTHER PARTY IS ENGAGED IN OPERATIONS IN VIOLATION
OF THIS TREATY OR REGULATIONS OR ORDERS OF THE COMMISSION
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THEREUNDER, OR WAS SO ENGAGED IMMEDIATELY PRIOR TO BOARD-
ING, HE MAY REQUIRE THE VESSEL TO STOP, BOARD THE VESSEL,
AND INSPECT ITS LOG BOOK, GEAR AND HOLDS. IF HE CONTINUES
TO HAVE REASONABLE GROUNDS FOR BELIEVING THAT A VIOLATION
HAS BEEN COMMITTED, HE MAY SEIZE THE VESSEL AND ARREST
THE MASTER. IN THIS EVENT, THE ENFORCING OFFICIAL SHALL
IMMEDIATELY INFORM DULY AUTHORIZED OFFICIALS OF THE PARTY
OF NATIONALITY OF THE VESSEL AND SHALL PROMPTLY DELIVER
THE VESSEL, MASTER AND CREW TO SUCH OFFICIALS. THE PARTY
OF NATIONALITY OF THE VESSEL SHALL HAVE THE EXCLUSIVE
RIGHT TO INSTITUTE PROCEEDINGS AND IMPOSE PENALTIES FOR
VIOLATIONS.

4. EACH PARTY SHALL ESTABLISH AND APPLY PENALTIES SUFFI-
CIENTLY SEVERE TO DETER VIOLATIONS OF THE COMMISSION REGU-
LATIONS AND ORDERS. THE PARTIES AND THE COMMISSION
SHALL ENDEAVOR TO ESTABLISH A UNIFORM SET OF PENAL-
TIES APPLICABLE TO ALL VIOLATIONS IN THE AREA.

5. PERIODIC REPORTS OF ENFORCEMENT ACTIONS AND THE RESULTS
OF PROCEEDINGS SHALL BE SUBMITTED TO THE COMMISSION.

ARTICLE 9

IN ORDER TO ENSURE THE AVAILABILITY OF ADEQUATE SCIENTIFIC
INFORMATION ON WHICH TO BASE ITS REGULATIONS AND ORDERS,
THE COMMISSION SHALL DEVELOP A PROGRAM OF MARINE SCIENTIF-
IC RESEARCH TO BE RECOMMENDED TO THE PARTIES. THE COMMIS-
SION SHALL SUBMIT PROPOSALS INCLUDING BUDGETS TO THE
PARTIES FOR APPROVAL.

ARTICLE 10

THE PARTIES AGREE TO AUTHORIZE FISHING FOR SPINY LOBSTER
IN THE AREA ONLY PURSUANT TO COMMISSION REGULATIONS AND
ORDERS IN EFFECT. IN ADDITION, THEY AGREE TO ESTABLISH
SUCH LAWS AND REGULATIONS AS MAY BE NECESSARY TO ENSURE
COMPLIANCE WITH THE TREATY AND COMMISSION REGULATIONS AND
ORDERS ISSUED THEREUNDER.

ARTICLE 11

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THE PARTIES SHALL CONSULT THROUGH DIPLOMATIC CHANNELS
CONCERNING THE SETTLEMENT OF ANY DISPUTE BETWEEN THEM
ARISING OUT OF THE INTERPRETATION OR APPLICATION OF THIS

TREATY.

ARTICLE 12

1. THIS TREATY SHALL ENTER INTO FORCE UPON THE EXCHANGE
OF INSTRUMENTS OF RATIFICATION BETWEEN THE PARTIES.

2. THIS TREATY MAY BE AMENDED OR TERMINATED BY AGREEMENT
OF BOTH PARTIES.

ARTICLE 13

1. PENDING THE ENTRY INTO FORCE OF THIS TREATY:

A) A PROVISIONAL COMMISSION SHALL BE ESTABLISHED IN
ACCORDANCE WITH THE PROVISIONS OF THIS TREATY APPLICABLE
TO THE COMMISSION, PROVIDED THAT THE PROVISIONAL COMMISSION
SHALL ONLY MAKE RECOMMENDATIONS TO THE PARTIES;

B) FISHING FOR SPINY LOBSTER BY VESSELS OF EITHER PARTY
MAY CONTINUE IN THOSE PARTS OF THE AREA WHERE SUCH FISH-
ING HAS PREVIOUSLY OCCURRED;

C) EACH PARTY WILL USE ITS BEST EFFORTS TO ENSURE,
INSOFAR AS POSSIBLE, VOLUNTARY COMPLIANCE BY ITS VES-
SELS WITH THE RECOMMENDATIONS OF THE PROVISIONAL COMMIS-
SION;

D) THE PROVISIONS OF ARTICLE 9 SHALL BE IMPLEMENTED;

E) NEITHER PARTY WILL OBJECT TO THE IMPOSITION BY THE
OTHER PARTY OF A REASONABLE INTERIM FEE, IN ACCORDANCE
WITH THE RECOMMENDATIONS OF THE PROVISIONAL COMMISSION,
IN RESPECT OF THE CATCH BY FOREIGN VESSELS OF SPINY
LOBSTER SUBJECT TO ITS JURISDICTION UNDER INTERNATIONAL
LAW.

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2. SHOULD THIS TREATY ENTER INTO FORCE PRIOR TO THE
ENACTMENT OF NECESSARY IMPLEMENTING LEGISLATION BY EITHER
PARTY, THAT PARTY SHALL TAKE ALL APPROPRIATE STEPS CONSIS-
TENT WITH ITS LAWS TO ENSURE COMPLIANCE BY ITS VESSELS
WITH THIS TREATY AND COMMISSION REGULATIONS AND ORDERS
ISSUED THEREUNDER.

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